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Surprise Tobacco Data: Suits Fall

The Flood Expected After Jersey Verdict Doesn't Materialize

By WILLIAM GLABERSON

Three months after the first jury verdict ever against a tobacco company for a smoker's death, the flood of lawsuits that antismoking advocates predicted would threaten the cigarette industry's future has not materialized; new statistics show.

The surprising new data are the strongest evidence to date that the tobacco industry's strategy of wearing down and outlasting its opponents with an aggressive, expensive defense may be working.

Since June 13, when a New Jersey jury won national attention with its award of \$400,000 to Antonio Cipollone, the widower of Rose Cipollone, who had been a cigarette smoker, lawyers have filed only one new suit against a tobacco company and have withdrawn 11 others. Of those dropped, no settlements were reached. The number of pending suits is now 85, down from 152 in March 1987, when the wave of tobacco cases reached its zenith, according to data compiled by the industry's committee of lawyers in response to a request by The New York Times. Antismoking advocates do not quarrel with the statistics.

Successes in Other Cases

People on both sides of the contro-

versy say the number of antismoking suits has declined because of a string of tobacco industry successes in other cases.

Lawyers for smokers and their survivors may also be discouraged, legal experts say, because the Cipollone verdict was not as clear a success as the antismoking forces had hoped. The jury gave what lawyers said was a relatively modest award to Antonio Cipollone, but it gave nothing to the estate of his wife, who the jury said was 80 percent responsible for her death by continuing to smoke after concerns about tobacco and health had become widespread. The case is believed to have cost Mr. Cipollone's lawyers at least \$500,000 to prepare.

"The plaintiffs' bar has begun to recognize the hurdles in these cases, including the issue of the personal responsibility of the smokers themselves," said Marshall S. Shapo, an expert on product-liability law at Northwestern University.

On Wall Street, some analysts are saying that investor concerns about the potential impact of the liability cases on the financial health of the tobacco companies are beginning to ease. As evidence, they note that the stock prices of the two major cigarette makers, Philip Morris and RJR Nabisco have been gradually increasing in recent months.

Investors have been wary of tobacco stocks since mid-1985, when the lawsuits first drew national publicity. Antismoking advocates had suggested that a single victory could jeopardize the industry's financial

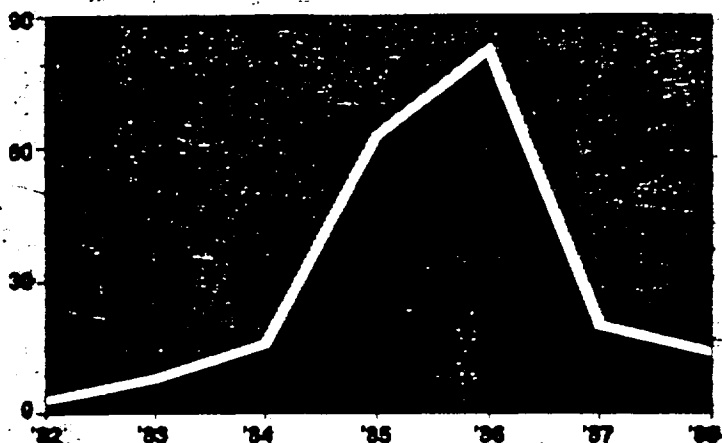
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Attacks on Tobacco Companies Ease

After peaking in 1986, the number of new suits filed annually in the United States against tobacco companies involving smokers' deaths has fallen sharply, shown below. The number of cases pending has also dropped, from a high of 162 in 1987 to 85 this year.



Source: Committee of tobacco industry counsel

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base by encouraging hundreds if not thousands of suits by survivors of the estimated 300,000 people whose deaths are linked to smoking every year.

Higher Prices Hoped For

Besides hoping that the industry would have to pay big awards, antismoking advocates also hoped that the litigation would force the industry to raise prices, which might discourage people from smoking.

"We are in the final throes of lifting the litigation cloud from the cigarette industry," said Emanuel Goldman, a tobacco analyst at Paine Webber Inc.

While some legal experts last June had hailed the Cipollone verdict as a victory for the tobacco industry, some in the antismoking camp had predicted that it would be "the case" that would "open the floodgates of litigation."

"There will be cases from Anchorage, Alaska, down to Miami," Melvin Belli, the well-known plaintiff's lawyer, told Newsday on the day of the verdict.

But in light of the new data and the industry's court record, some antismoking advocates are now more pessimistic. The battle with the industry "is going to take longer than I had ever imagined," said Richard A. Daynard, chairman of the Tobacco Products Liability Project at the Northeastern University School of Law and a leader of the antismoking drive.

Industry Victories

The industry has won four important Federal appeals court decisions on major legal issues. In these cases, the appeals courts agreed with the industry argument that smokers cannot sue companies for failing to warn them about the health risks of smoking.



Associated Press

Antonio Cipollone, after jury awarded him \$400,000 in suit against tobacco companies in the death of his wife, Rose.

ing after Congress mandated warnings on cigarette packages in 1966. Antismoking advocates have succeeded only in a Minnesota appeals court. In addition, the industry won several trials before and one since the Cipollone verdict.

Some lawyers who backed out of litigation were not prepared for the tough battle waged by the tobacco companies on every case, antismoking activists say.

"There are a lot of lawyers who said: 'Hey, this is an easy win,'" said John F. Banzhaf Jr., executive director of Action on Smoking and Health, an antismoking group. "They jumped in and they filed all these cases and

then they found out how tough they were so they dropped them."

Delaying Tactics Charged

Tobacco lawyers make extensive demands on smokers' lawyers' time and employ what those lawyers charge are skillful delaying tactics.

In a memo at one of R.J. Reynolds's law firms this spring a lawyer told his colleagues that an opponent was dropping 10 cases against Reynolds because "the aggressive posture we have taken regarding depositions and discovery make these cases extremely burdensome and expensive for plaintiffs' lawyers, particularly sole practitioners."

Daniel W. Donahue, a partner in the law firm of Womble, Carlyle, Sandridge & Rice in Winston-Salem, N.C., confirmed that the memo had been written by one of the firm's lawyers but said it did not represent the official defense posture of Reynolds.

Analysts say the latest turn in the tobacco litigation does not mean it is coming to an end. But what might have been a disabling onslaught for the cigarette industry is becoming instead a nagging fact of business life that is likely to remain for years. "What we're beginning to see is that the legal issue is more of an irritation than something that is going to put them in financial jeopardy," said George E. Thompson, a securities analyst at Prudential-Bache Securities.

Lawyers who may already be reluctant to take on the tobacco industry got an additional dose of caution in an article in the current issue of *The American Lawyer*. The trade newspaper reports that interviews with jurors in the Cipollone case indicated that the industry's lawyers were very convincing. At least one juror who reluctantly supported a compromise to award Mr. Cipollone the \$400,000 has changed her mind, and wishes she had held out, the newspaper says. That would have resulted in a hung jury.

According to a Knight-Ridder News Service report on Sept. 4, three of the six jurors now say they should not have awarded any money. Both sides are expected to appeal the verdict but jurors' afterthoughts would not be considered by appeals judges.

Given the many turns in the more than 300 liability cases over 25 years, industry representatives are not declaring victory. But that does not stop them from trying to get as much mileage as they can from the current good news.

"Certainly a lot of people predicted that Cipollone would open the floodgates," said Thomas D. Ricke, the chief spokesman for Philip Morris. "We didn't think so. We were told we'd have to wait and see. Well, we've waited and we've seen."

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